1952.

File No. O Insurance/52
Legal Dept.

A BRANCH

Subject:— Opinion under the

Insurance Act, 1938.

File No.
Gen. 104

Insurance/52.

523-A

C O N T E N T S.

Legal Department File No. O. Insurance/ 52.

S.No.	R.I. / O.No.	Subject	Pages/
	O.Insurance /1952.	Opinions under the Insurance Act, 1938.	
1.	8210 16.5.1952.	Whether the second assignment of the policies which are acceptable under the rules would be valid even though the original assignments mf dt. 27.9.1951 have not been revoked.	1.
2.	9031 30.5.52.	——— do ———	3.
3.	16810/A 11.10.52.	If the premia in respect of the fidelity guarantee policies are paid by Government Servants themselves, acceptance of insurance by the fund would attract the operation of the Act but if paid Govt. Depts there would be no objection to the fund covering the risk.....	5 - 6.

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R.V.T. 15/6.

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K.S.R. 16/6

C O N T E N T S.

Legal Department File No. O. Insurance/ 52.

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— Orrice of the A.L.A.

Section 38(1) of the Insurance Act provides that the transfer or assignment signed by the transferer should be attested at least by one witness. Sub-section (2) provides that the transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument duly attested. Where an instrument is required to be "attested", the meaning is that a witness shall be present at its execution and shall testify on it that it has been executed by the proper person (Freshfield v. Reed 11 L.J.E. 193). Attestation means that what is said to be attested happened in the presence of the attesting witness (7 C.W.N. 160). It is really an act of witnessing the actual execution of a paper and subscribing one's name as a witness to that fact. That being so, the date of executio of the endorsement and the date of attestation by the witne should be the same and not in different. In respect of polic No. 322292 assigned by Shri Yadav and his wife, it cannot be held that the assignment of the policy is duly attested because the date on which Mrs. Yadav executed the document i different from the date on which the witnesses attested the same. Even the date of assignment is different. The only feasible course would, therefore, be to confirm the assign- ment dated the 27th September 1951 by a separate instrument.

As regards policy No.323379 held by Shri Tambekar, from the names of the person executing the transfer the proper persons can be identified as executors. Mere misdescription of the surname would not materially affect the assignment as duly attested and made effective. No subsequent assignment therefore appears necessary.

Sd/- P.M.Lal,
15/5.
Remembrancer of Legal Affairs.

U.R. to P & S.D. No. 8210, dated the 16th May 1952.

A.Cs.

M.V.V.
15/6.

Opinion of the R.L.A.

Insurance Act, 1938.
Bom. General Prov. Fund Rules : rule 25.
R.L.A's opinion No.8210 dt. 16.5.52.

Since the first assignment effected by Shri Yadav and his wife on 27th September 1951 was not duly attested, it was not a valid assignment. The subsequent assignment dated 15th January 1952 however did not specifically cancel the former and it was therefore suggested that to leave no room for doubt about the legal position, the second assignment dated 15th January 1952 should be got confirmed by a separate instrument. For the words and figures "dated the 27th September 1951" in para 1. of R.L.A's opinion No. 8210 dated 16th May 1952, the words and figures "dated the 15th January 1952" should be substituted.

As regards the second policy assigned by Shri Tambaku and his wife since the first assignment dated 27th September 1951 was valid, the second dated 15th January 1952 was not necessary and it may be treated as superfluous.

Sd/- F.M.Lad,
20/5.
Remembrancer of Legal Affairs.

U.R. to P. & S.D. No.9031, dated the 20th May 1952.

L-Ca.

K.V.V.
15/6.

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27.9.52.

Submitted with reference to D.S., F.D's note at p. 13 ante. By G.O., F.D. No.3464/33-XIII, dated 25/7/1951, Government has established an Insurance Fund to act as an insurer for all Government Commercial and Industrial schemes. The question now discussed in these papers is whether it would be open possible to extend the scope of the Insurance Fund to the covering of fidelity guarantee policies required from some Government servants under rule 40 of the Financial Rules; or whether such extension would attract the operation of the Insurance Act, 1938. The D.S., F.D. considers that if the premia in respect of the Fidelity guarantee policies are paid by the Government servants themselves, acceptance of insurance by the Fund would attract the operation of the Insurance Act, 1938; but if the premia are paid by Govt. Depts. themselves there would be no objection to the Fund covering the risk. The R.L.A. is requested to advise whether the view expressed by the D.S., F.D. is correct. A The view expressed by the D.S., F.D. in his note at P.13 ante is correct. A

Sd/- D.W.D.
8/10/52.

D.S.(Opinion) As at A.

I.d. R.T.K.
8/10

Sd/- R.T.K./8.10

R.L.A. F.H.Lad,
8/10.

U.O.R. to F.D.No.16810/A, dt. 11.10.1952.

A-Cs.

M.V.V.
15/6.